
ENGROSSED SUBSTITUTE SENATE BILL 5889

State of Washington

58th Legislature

2003 Regular Session

By Senate Committee on Agriculture (originally sponsored by Senators Swecker and Rasmussen)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to animal feeding operations; amending RCW
2 90.64.030, 90.64.150, and 90.48.260; adding a new section to chapter
3 90.64 RCW; creating new sections; providing an effective date;
4 providing an expiration date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A livestock nutrient management program is
7 essential to ensuring a healthy and productive livestock industry in
8 Washington state. The goal of the program must be to provide clear
9 guidance to livestock farms as to their responsibilities under state
10 and federal law to protect water quality while maintaining a healthy
11 business climate for these farms. The program should develop
12 reasonable financial assistance resources, educational and technical
13 assistance to meet these responsibilities, and provide for periodic
14 inspection and enforcement actions to ensure compliance with state and
15 federal water quality laws. The legislature intends that by 2006,
16 there will be a fully functioning state program for concentrated animal
17 feeding operations in the state, and that this program will be a single
18 program for all livestock sectors.

1 The legislature finds that a livestock nutrient management program
2 is necessary to address the federal rule changes with which livestock
3 operations must comply. Furthermore, budgetary conditions demand
4 efficient and effective governance. In addition, many of the existing
5 requirements and goals for dairy farms will be completed by December
6 2003, and revisions will be needed.

7 NEW SECTION. **Sec. 2.** (1) A livestock nutrient management program
8 development and oversight committee is created comprised of the
9 following members, appointed as follows:

10 (a) The director of the department of agriculture, or the
11 director's designee, who shall serve as committee chair;

12 (b) The director of the department of ecology, or the director's
13 designee;

14 (c) A representative of the United States environmental protection
15 agency, appointed by the regional director of the agency unless the
16 agency chooses not to be represented on the committee;

17 (d) A representative of commercial shellfish growers, nominated by
18 an organization representing these growers, appointed by the governor;

19 (e) A representative of an environmental interest organization with
20 familiarity and expertise in water quality issues, appointed by the
21 governor;

22 (f) A representative of tribal governments as nominated by an
23 organization representing tribal governments, appointed by the
24 governor;

25 (g) A representative of Washington State University appointed by
26 the dean of the college of agriculture and home economics;

27 (h) Three representatives of dairy producers nominated by a
28 statewide organization representing dairy producers in the state,
29 appointed by the governor;

30 (i) Two representatives of beef cattle producers nominated by a
31 statewide organization representing beef cattle producers in the state,
32 appointed by the governor;

33 (j) One representative of poultry producers nominated by a
34 statewide organization representing poultry producers in the state,
35 appointed by the governor;

36 (k) One representative of the commercial cattle feedlots nominated

1 by a statewide organization representing commercial cattle feedlots in
2 the state, appointed by the governor; and

3 (1) A representative of any other segment of the livestock industry
4 determined by the director of agriculture to be subject to federal
5 rules regulating animal feeding or concentrated animal feeding
6 operations.

7 (2) The state department of agriculture shall provide staff for the
8 committee. The department of agriculture may request staff assistance
9 be assigned by the United States environmental protection agency to
10 assist the director in staffing the committee.

11 (3) The committee shall establish a work plan that includes a list
12 of tasks and a projected completion date for each task.

13 (4) The committee may establish a subcommittee for each of the
14 major industry segments that is covered by the recently adopted federal
15 regulations that pertain to animal feeding operations and concentrated
16 animal feeding operations. The subcommittee shall be composed of
17 selected members of the full committee and additional representatives
18 from that major segment of the livestock industry as determined by the
19 director. The committee shall assign tasks to the subcommittees and
20 shall establish dates for each subcommittee to report back to the full
21 committee.

22 (5) The committee shall examine the recently adopted federal
23 regulations that provide for the regulation of animal feeding
24 operations and concentrated animal feeding operations and develop a
25 program to be administered by the department of agriculture that meets
26 the requirements and time frames contained in the federal rules.
27 Elements that the committee shall evaluate include:

28 (a) A process for adopting standards and for developing plans for
29 each operation that meet these standards;

30 (b) A process for revising current national pollution discharge
31 elimination system permits currently held by livestock operations and
32 to transition these permits into the new system; and

33 (c) In consultation with the director, a determination of what
34 other work is needed and what other institutional relationships are
35 needed or desirable. The committee shall consult with representatives
36 of the statewide association of conservation districts regarding any
37 functions or activities that are proposed to be provided through local
38 conservation districts.

1 (6) The committee shall review and comment on proposals for grants
2 from the livestock nutrient management account created in RCW
3 90.64.150.

4 (7) The committee shall develop draft proposed legislation that
5 includes:

6 (a) Statutory changes, including a time line to achieve the phased-
7 in levels of regulation under federal law, to comply with the minimum
8 requirements under federal law and the minimum requirements under
9 chapter 90.48 RCW. These changes must meet the requirements necessary
10 to enable the department of agriculture and the department of ecology
11 to pursue the United States environmental protection agency's approval
12 of the transfer of the permitting program as it relates to the
13 concentrated animal feeding operations from the department of ecology
14 to the department of agriculture;

15 (b) Statutory changes necessitated by the transfer of functions
16 under chapter 90.64 RCW from the department of ecology to the
17 department of agriculture;

18 (c) Continued inspection of dairy operations at least once every
19 two years;

20 (d) An outreach and education program to inform the various animal
21 feeding operations and concentrated animal feeding operations of the
22 program's elements; and

23 (e) Annual reporting to the legislature on the progress of the
24 state strategy for implementing the animal feeding operation and
25 concentrated animal feeding operation.

26 (8) The committee shall provide a report by December 1, 2003, to
27 appropriate committees of the legislature that includes the results of
28 the committee's evaluation under subsection (5) of this section and
29 draft legislation to initiate the program.

30 (9) This section expires June 30, 2006.

31 **Sec. 3.** RCW 90.64.030 and 2002 c 327 s 1 are each amended to read
32 as follows:

33 (1) Under the inspection program established in RCW 90.64.023, the
34 department may investigate a dairy farm to determine whether the
35 operation is discharging pollutants or has a record of discharging
36 pollutants into surface or ground waters of the state. Upon concluding
37 an investigation, the department shall make a written report of its

1 findings, including the results of any water quality measurements,
2 photographs, or other pertinent information, and provide a copy of the
3 report to the dairy producer within twenty days of the investigation.

4 (2) The department shall investigate a written complaint filed with
5 the department within three working days and shall make a written
6 report of its findings including the results of any water quality
7 measurements, photographs, or other pertinent information. Within
8 twenty days of receiving a written complaint, a copy of the findings
9 shall be provided to the dairy producer subject to the complaint, and
10 to the complainant if the person gave his or her name and address to
11 the department at the time the complaint was filed.

12 (3) The department may consider past complaints against the same
13 dairy farm from the same person and the results of its previous
14 inspections, and has the discretion to decide whether to conduct an
15 inspection if:

16 (a) The same or a similar complaint or complaints have been filed
17 against the same dairy farm within the immediately preceding six-month
18 period; and

19 (b) The department made a determination that the activity that was
20 the subject of the prior complaint was not a violation.

21 (4) If the decision of the department is not to conduct an
22 inspection, it shall document the decision and the reasons for the
23 decision within twenty days. The department shall provide the decision
24 to the complainant if the name and address were provided to the
25 department, and to the dairy producer subject to the complaint, and the
26 department shall place the decision in the department's administrative
27 records.

28 (5) The report of findings of any inspection conducted as the
29 result of either an oral or a written complaint shall be placed in the
30 department's administrative records. Only findings of violations shall
31 be entered into the data base identified in RCW 90.64.130.

32 (6) A dairy farm that is determined to be a significant contributor
33 of pollution based on actual water quality tests, photographs, or other
34 pertinent information is subject to the provisions of this chapter and
35 to the enforcement provisions of chapters 43.05 and 90.48 RCW,
36 including civil penalties levied under RCW 90.48.144.

37 (7) If the department determines that an unresolved water quality
38 problem from a dairy farm requires immediate corrective action, the

1 department shall notify the producer and the district in which the
2 problem is located. When corrective actions are required to address
3 such unresolved water quality problems, the department shall provide
4 copies of all final dairy farm inspection reports and documentation of
5 all formal regulatory and enforcement actions taken by the department
6 against that particular dairy farm to the local conservation district
7 and to the appropriate dairy farm within twenty days.

8 (8) For a violation of water quality laws that is a first offense
9 for a dairy producer, the penalty may be waived to allow the producer
10 to come into compliance with water quality laws. The department shall
11 record all legitimate violations and subsequent enforcement actions.

12 (9) A discharge, including a storm water discharge, to surface
13 waters of the state shall not be considered a violation of this
14 chapter, chapter 90.48 RCW, or chapter 173-201A WAC, and shall
15 therefore not be enforceable by the department of ecology or a third
16 party, if at the time of the discharge, a violation is not occurring
17 under RCW 90.64.010(18). In addition, a dairy producer shall not be
18 held liable for violations of this chapter, chapter 90.48 RCW, chapter
19 173-201A WAC, or the federal clean water act due to the discharge of
20 dairy nutrients to waters of the state resulting from spreading these
21 materials on lands other than where the nutrients were generated, when
22 the nutrients are spread by persons other than the dairy producer or
23 the dairy producer's agent.

24 (10) As provided under RCW 7.48.305, agricultural activities
25 associated with the management of dairy nutrients are presumed to be
26 reasonable and shall not be found to constitute a nuisance unless the
27 activity has a substantial adverse effect on public health and safety.

28 (11) This section specifically acknowledges that if a holder of a
29 general or individual national pollutant discharge elimination system
30 permit complies with the permit and the dairy nutrient management plan
31 conditions for appropriate land application practices, the permit
32 provides compliance with the federal clean water act and acts as a
33 shield against citizen or agency enforcement for any additions of
34 pollutants to waters of the state or of the United States as authorized
35 by the permit.

36 (12) A dairy producer who fails to have an approved dairy nutrient
37 management plan by July 1, 2002, or a certified dairy nutrient
38 management plan by December 31, 2003, and for which no appeals have

1 been filed with the pollution control hearings board, is in violation
2 of this chapter. Each month beyond these deadlines that a dairy
3 producer is out of compliance with the requirement for either plan
4 approval or plan certification shall be considered separate violations
5 of chapter 90.64 RCW that may be subject to penalties. Such penalties
6 may not exceed one hundred dollars per month for each violation up to
7 a combined total of five thousand dollars. The department has
8 discretion in imposing penalties for failure to meet deadlines for plan
9 approval or plan certification if the failure to comply is due to lack
10 of state funding for implementation of the program. Failure to
11 register as required in RCW 90.64.017 shall subject a dairy producer to
12 a maximum penalty of one hundred dollars. Penalties shall be levied by
13 the department.

14 **Sec. 4.** RCW 90.64.150 and 1998 c 262 s 15 are each amended to read
15 as follows:

16 The ~~((dairy waste))~~ livestock nutrient management account is
17 created in the custody of the state treasurer. All receipts from
18 monetary penalties levied pursuant to violations of this chapter must
19 be deposited into the account. Expenditures from the account may be
20 used only ~~((for the commission))~~ to provide grants ~~((to local~~
21 ~~conservation districts for the sole purpose of assisting dairy~~
22 ~~producers to develop and fully implement dairy nutrient management~~
23 ~~plans))~~ for research or education proposals that assist livestock
24 operations to achieve compliance with state and federal water quality
25 laws. The director of agriculture shall accept and prioritize research
26 proposals and education proposals. Only the ~~((chairman of the~~
27 ~~commission))~~ director or the ~~((chairman's))~~ director's designee may
28 authorize expenditures from the account. The account is subject to
29 allotment procedures under chapter 43.88 RCW, but an appropriation is
30 not required for expenditures.

31 NEW SECTION. **Sec. 5.** A new section is added to chapter 90.64 RCW
32 to read as follows:

33 (1) All powers, duties, and functions of the department of ecology
34 pertaining to chapter 90.64 RCW are transferred to the department of
35 agriculture. All references to the director of ecology or the
36 department of ecology in the Revised Code of Washington shall be

1 construed to mean the director of agriculture or the department of
2 agriculture when referring to the functions transferred in this
3 section.

4 (2)(a) All reports, documents, surveys, books, records, files,
5 papers, or written material in the possession of the department of
6 ecology pertaining to the powers, functions, and duties transferred
7 shall be delivered to the custody of the department of agriculture.
8 All cabinets, furniture, office equipment, motor vehicles, and other
9 tangible property employed by the department of ecology in carrying out
10 the powers, functions, and duties transferred shall be made available
11 to the department of agriculture. All funds, credits, or other assets
12 held in connection with the powers, functions, and duties transferred
13 shall be assigned to the department of agriculture.

14 (b) Any appropriations made to the department of ecology for
15 carrying out the powers, functions, and duties transferred shall, on
16 the effective date of this section, be transferred and credited to the
17 department of agriculture.

18 (c) Whenever any question arises as to the transfer of any
19 personnel, funds, books, documents, records, papers, files, equipment,
20 or other tangible property used or held in the exercise of the powers
21 and the performance of the duties and functions transferred, the
22 director of financial management shall make a determination as to the
23 proper allocation and certify the same to the state agencies concerned.

24 (3) All rules and all pending business before the department of
25 ecology pertaining to the powers, functions, and duties transferred
26 shall be continued and acted upon by the department of agriculture.
27 All existing contracts and obligations shall remain in full force and
28 shall be performed by the department of agriculture.

29 (4) The transfer of the powers, duties, functions, and personnel of
30 the department of ecology shall not affect the validity of any act
31 performed before the effective date of this section.

32 (5) If apportionments of budgeted funds are required because of the
33 transfers directed by this section, the director of financial
34 management shall certify the apportionments to the agencies affected,
35 the state auditor, and the state treasurer. Each of these shall make
36 the appropriate transfer and adjustments in funds and appropriation
37 accounts and equipment records in accordance with the certification.

1 **Sec. 6.** RCW 90.48.260 and 1988 c 220 s 1 are each amended to read
2 as follows:

3 The department of ecology is hereby designated as the State Water
4 Pollution Control Agency for all purposes of the federal clean water
5 act as it exists on February 4, 1987, and is hereby authorized to
6 participate fully in the programs of the act as well as to take all
7 action necessary to secure to the state the benefits and to meet the
8 requirements of that act. With regard to the national estuary program
9 established by section 320 of that act, the department shall exercise
10 its responsibility jointly with the Puget Sound water quality
11 authority. The department of ecology may delegate its national
12 pollution discharge elimination permit system authority and duties
13 regarding animal feeding operations and concentrated animal feeding
14 operations to the department of agriculture through a memorandum of
15 understanding. The powers granted herein include, among others, and
16 notwithstanding any other provisions of chapter 90.48 RCW or otherwise,
17 the following:

18 (1) Complete authority to establish and administer a comprehensive
19 state point source waste discharge or pollution discharge elimination
20 permit program which will enable the department to qualify for full
21 participation in any national waste discharge or pollution discharge
22 elimination permit system and will allow the department to be the sole
23 agency issuing permits required by such national system operating in
24 the state of Washington subject to the provisions of RCW 90.48.262(2).

25 Program elements authorized herein may include, but are not limited
26 to: (a) Effluent treatment and limitation requirements together with
27 timing requirements related thereto; (b) applicable receiving water
28 quality standards requirements; (c) requirements of standards of
29 performance for new sources; (d) pretreatment requirements; (e)
30 termination and modification of permits for cause; (f) requirements for
31 public notices and opportunities for public hearings; (g) appropriate
32 relationships with the secretary of the army in the administration of
33 his responsibilities which relate to anchorage and navigation, with the
34 administrator of the environmental protection agency in the performance
35 of his duties, and with other governmental officials under the federal
36 clean water act; (h) requirements for inspection, monitoring, entry,
37 and reporting; (i) enforcement of the program through penalties,

1 emergency powers, and criminal sanctions; (j) a continuing planning
2 process; and (k) user charges.

3 (2) The power to establish and administer state programs in a
4 manner which will insure the procurement of moneys, whether in the form
5 of grants, loans, or otherwise; to assist in the construction,
6 operation, and maintenance of various water pollution control
7 facilities and works; and the administering of various state water
8 pollution control management, regulatory, and enforcement programs.

9 (3) The power to develop and implement appropriate programs
10 pertaining to continuing planning processes, area-wide waste treatment
11 management plans, and basin planning.

12 The governor shall have authority to perform those actions required
13 of him or her by the federal clean water act.

14 NEW SECTION. **Sec. 7.** Sections 2 and 5 of this act are necessary
15 for the immediate preservation of the public peace, health, or safety,
16 or support of the state government and its existing public
17 institutions, and take effect July 1, 2003.

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